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No. .....

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,
Appellant,

VS.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

JESSE R. PIERCE
PORTER & CLEMENTS
711 Polk, Suite 1200
Houston, Texas 77002
(713) 757-7040

Counsel for Appellant

QUESTIONS PRESENTED

1. Is a justiciable issue presented under the due process clause of the fourteenth amendment to the Constitution of the United States by a city's annexation and taxation of property in the Gulf of Mexico when no municipal benefit can be provided to the property and the annexation is done solely for purposes of taxation?

2. Is the due process clause of the fourteenth amendment to the Constitution of the United States, which incorporates as against the states the due process and taking clauses of the fifth amendment, violated by a city's annexation and taxation of property in the Gulf of Mexico when no municipal benefit can be provided to the property and the annexation is done solely for purposes of taxation?

LIST OF ALL PARTIES

APPELLANT:

The Superior Oil Company*

APPELLEES:

The City of Port Arthur, Texas

Bernis W. Sadler, Mayor and Member of the City Council of the City of Port Arthur

George W. Dibrell, City Manager of the City of Port Arthur, Texas

Maurice Conerly, Arthur J. Guidry, Joe James, Malcolm L. Clark, C. Fred Huber, and Ray Bernard, Members of the City Council of Port Arthur, Texas

The Board of Equalization of the City of Port Arthur, Texas for the year 1980

Sam Aguilina, George W. Lacey, Leroy Arceneaux, E. W. Meyer, and Alfred Valdez, Members of the Board of Equalization of the City of Port Arthur, Texas for the year 1980

Roland Bieber, Tax Assessor and Collector of the City of Port Arthur, Texas

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*The only affiliates or subsidiaries of appellant are:
Falconbridge Nickel Mines, Ltd.
McIntyre Mines, Ltd.

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Myles Salt Co. v. *Board of Commissioners*, 239 U.S. 478 (1915) 7

Constitutional Provisions

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Supreme Judicial District of Texas is reported at 628 S.W.2d 94 (1981). The district court did not write an opinion; however, its final judgment is appended hereto as Appendix C. The Supreme Court of Texas did not write an opinion in refusing appellant's application for writ of error.

STATEMENT OF JURISDICTION

The Superior Oil Company, appellant, appeals from the judgment of the Court of Appeals for the Ninth Supreme Judicial District of Texas affirming a summary judgment against appellant. This action was brought by appellant to challenge appellees' annexation and taxation of property located far out in the Gulf of Mexico on the ground that the annexation and taxation of property to which no municipal benefit can possibly be extended is a violation of the due process clause of the fourteenth amendment to the Constitution of the United States.

The judgment of the Court of Appeals for the Ninth Supreme Judicial District of Texas was rendered on December 22, 1981. Appellant's motion for rehearing in the court of appeals was overruled on January 14, 1982. Appellant filed a timely application for writ of error in the Supreme Court of Texas; the application was refused by the Supreme Court of Texas on April 7, 1982, and appellant's timely motion for rehearing was overruled by the Supreme Court of Texas on May 12, 1982. This Court has jurisdiction of this appeal under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISION AND ORDINANCE INVOLVED

The constitutional provision involved in this case is the due process clause of the fourteenth amendment to the Constitution of the United States, which provides in pertinent part: "No State

shall . . . deprive any person of life, liberty, or property, without due process of law . . ." U.S. Const. amend. XIV, §1.

The ordinance involved in this case is City of Port Arthur Ordinance No. 79-116, adopted December 10, 1979. The ordinance is set out in the Appendix as Appendix H.

STATEMENT OF THE CASE

During 1979, the City of Port Arthur, Texas annexed a large strip of the Gulf of Mexico off the coast of Texas, including approximately 1190 acres of submerged territory upon which appellant holds oil, gas and mineral leases from the State of Texas. Appellant's property, which consists of the valuable leasehold estate and production equipment located on the lease, lies some nine miles from shore in the Gulf of Mexico.[1]

In 1980, appellees assessed ad valorem property taxes of $774,430.80 on the property. Appellant filed suit in the state district court for a declaratory judgment that the annexation and taxation of this property violated the due process clause of the fourteenth amendment to the United States Constitution.

The trial court granted a summary judgment against appellant. This judgment was affirmed by the Court of Appeals for the Ninth Supreme Judicial District of Texas. The Supreme Court of Texas refused appellant's application for writ of error with the notation "no reversible error."

The constitutional question was first raised by appellant in the district court. Appellant alleged in its second amended original petition that:

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[1] Given the unique physical location of the property, many miles seaward in deep water far from land, appellant, who has been unable to locate any other reported cases dealing with municipal attempts to annex similar portions of the nation's sea lanes or blue water areas, believes this case to be quite unique.

> Because no municipal services or benefits of any kind can or will be extended to Plaintiff's property, the burden of taxation is imposed without any benefit to the property and thus amounts to an arbitrary taking of property without compensation. The taxation of the property by the City is confiscatory and a taking of Plaintiff's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Plaintiff's Second Amended Original Petition at 2. In its second amended original petition, appellant sought the following relief:

> A declaratory judgment that (1) Ordinance No. 79-116 is unconstitutional and void and that the property in question is not subject to ad valorem taxation by the City of Port Arthur; (2) the taxation of Plaintiff's property by the City of Port Arthur is unconstitutional . . . .

Id. at 4. The district court did not specify the grounds upon which the summary judgment was based.

Appellant raised the constitutional issue in the fifth and sixth points of error in its brief in the court of appeals, in which it stated:

> 5. The trial court erred in granting Defendants' motion for summary judgment because Defendants' annexation of the property in question was void as a matter of law because it was done solely for purposes of taxation.
>
> 6. The trial court erred in granting Defendants' motion for summary judgment because Defendants failed to establish as a matter of law that there are no genuine issues of material fact regarding Plaintiff's claim that the taxation of the property in question by Defendants was void because it constituted a violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The court of appeals held first that no justiciable issue was presented, stating:

> Appellant's only complaint is that the annexation and taxation of its property violates the due process clause and the equal protection clause of the Fourteenth Amendment of the United States Constitution. These contentions do not present a justiciable matter under such constitutional amendment, and cannot form a basis for rendering void the annexation of appellant's property.

628 S.W.2d at 96. The court of appeals went on to state later in its opinion:

> Assuming appellant established that its property was within an area annexed by the City solely for purposes of raising additional revenue, we find such fact would not render the annexation ordinance void.
>
> * * *
>
> Furthermore, the mere fact that the annexation was for taxation and revenue raising purposes and that no municipal services were provided does not render the annexation void.

628 S.W.2d at 97.

In its application for writ of error to the Supreme Court of Texas, appellant again raised the constitutional question in its third and fourth points of error as follows:

THIRD POINT OF ERROR

> The Court of Appeals erred in holding that respondents' annexation of the property in question was valid even if it was done for revenue purposes only.

FOURTH POINT OF ERROR

> The Court of Appeals erred in holding that petitioner's claim that the annexation was void does not present a justiciable matter.

In its application for writ of error, appellant also pointedly stated: "The issue in this case is whether a city may lawfully

annex private property in order to tax it solely for the benefit of other property." Appellant's Application for Writ of Error at 7.

Appellant has raised the constitutional questions presented for review here at every stage of the proceedings below and the lower court has held that private property may be annexed and taxed solely for the benefit of other property without giving rise to a justiciable claim under the fourteenth amendment.

THE QUESTIONS ARE SUBSTANTIAL

This case presents a substantial question of a city's annexation and taxation power under the fourteenth amendment. This question has never been directly addressed by this Court.

The basic issue presented by this case is whether a city is free to annex and tax property to which it cannot render any municipal benefit. The issue is presented here in a context that is unique for two reasons. First, the physical facts are remarkable. The property which has been annexed and taxed consists of production platforms and an undersea gas field located far out in the Gulf of Mexico. The only physical relation between the City of Port Arthur and this property results from the fact that the City consciously conducted a series of strip annexations out into the Gulf until it reached this property. The nature and location of the property bring into sharp focus the aspect of this case that sets it apart from most annexation challenges. Appellees can provide no municipal services to the property and indeed have never intended to provide any benefit to it. Appellees reached nine miles out into the Gulf of Mexico and annexed this property solely to tax it. This fact is clearly shown by the following

memorandum from Ross Wilhite, the City of Port Arthur's Director of Planning, to the City Manager.

From the desk of

Ross Wilhite

G.D.

Here is Gas Find. It would take three separate "annexations" to reach. Could be done but would obviously be for revenue purposes only.

Ross

STATE OF TEXAS TRACT
1200 ACRES / SUPERIOR LEASE

This memorandum appears in the record as an exhibit to the deposition of Mr. Wilhite.

This case also presents the constitutional questions in sharp focus from a legal viewpoint. As this is an appeal from a summary judgment, the courts below were required to view all facts in the record in the light most favorable to appellant. Thus, in spite of the memorandum reproduced above and deposition testimony from officers of the City supporting appellant's claim, the trial court held in effect that a city is free to annex and tax property to which no benefit can be extended.[2] Speaking in terms of "justiciability", the court of appeals ruled that the fourteenth amendment is not violated by an annexation which is done solely for purposes of taxation for the benefit of other property.

This ruling is in conflict with a principle announced by this Court long ago in *Myles Salt Co.* v. *Board of Commissioners*, 239 U.S. 478 (1916), in which this Court held that where a drainage district "is so formed to include property which is not and cannot be benefitted directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation." *Id.* at 485. The question here is whether this principle should be applied to a municipal annexation. Is a city free to annex and tax property to which it cannot possibly extend any benefit?

In its opinion below, the court of appeals relied on *Hunter* v. *City of Pittsburgh*, 207 U.S. 161 (1907), and its progeny for the rule that a municipal annexation does not present a justiciable matter under the fourteenth amendment. However, as Justice Frankfurter pointed out in *Gomillion* v. *Lightfoot*, 364 U.S. 339, 342 (1960), the opinion in *Hunter* v. *City of Pittsburgh* should not be read as an absolute prohibition to review of

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[2] The court of appeals below twice recognized that for purposes of the appeal, the undersea location of the property required the court to assume that the annexation was solely for taxation and no municipal services or benefits could be provided.

municipal annexations under the fourteenth amendment. The court of appeals saw fit to ignore Justice Frankfurter's caution. By affirming the summary judgment here, the court of appeals has held that *Hunter* v. *City of Pittsburgh* presents an absolute shield to judicial review of a city's annexation even though the annexation was done solely for the purpose of taxation for the benefit of other property. Appellant submits that this is too broad a reading of *Hunter* v. *City of Pittsburgh*.

As this Court has long recognized, reasonable exercise of the taxing power, absent other facts, is not a violation of the fifth amendment's prescription against "taking without just compensation"[3] because the taxing entity in turn provides benefits, direct and indirect, measurable and immeasurable, to the entity taxed. However, Port Arthur is not the fabled City of Atlantis ruling an undersea domain, and its attempt to tax that to which it concededly cannot provide direct or indirect, measurable or immeasurable benefit, constitutes the rare case of an abuse of the taxing power that amounts to a taking without just compensation.

As this Court has held since early in its history, such a confiscatory exercise of the taxing power runs squarely afoul of our Constitution. For example, this Court in *Dane* v. *Jackson*, 256 U.S. 589, 599 (1921) noted, in properly upholding a Massachusetts taxing law, that "a state tax law will be held to conflict with the fourteenth amendment only where it proposes, or clearly results in such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without just compensation." Given that the court below has found no conceivable benefit to the property in return for the tax dollars exacted from the owner,

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[3] This constitutional guarantee has long been held to have been extended to state conduct by the due process clause of the fourteenth amendment to the Constitution. *Chicago B. & Q.R.R.* v. *Chicago*, 166 U.S. 226, 142 (1897).

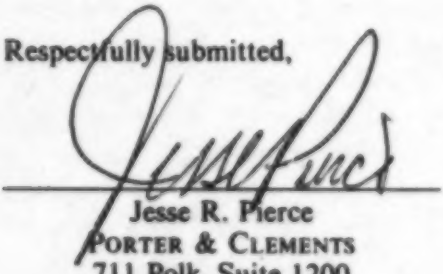
this is that rare case foreseen in *Dane:* not a case of measuring and weighing indirect or intangible benefits and burdens, but a case of an arbitrary and capricious taking without benefit or compensation.

The sole issue presented here is whether a city may annex and tax one person's property solely for the benefit of other property. Because of its unusual factual and legal context, this case raises that issue as starkly as if the appellees had confiscated the property and sold it to raise general revenue for the city. This is an arbitrary confiscation in blatant disregard of established constitutional principles articulated by this Court. This Court cannot permit this result to stand unless it is willing to tolerate unprecedented, gratuitous municipal land grabs that will make the Port Arthurs of the country truly "islands of Tobago ruling the World."

CONCLUSION

For the reasons stated, appellant respectfully submits that this Court should note probable jurisdiction of this appeal, and either summarily reverse the judgment below or set this case for oral argument.

Respectfully submitted,



Jesse R. Pierce
PORTER & CLEMENTS
711 Polk, Suite 1200
Houston, Texas 77002
(713)757-7040

Of Counsel:

THOMAS H. LEE
FOREMAN & DYESS
Inter First Plaza
Houston, Texas 77002
(713)658-8500

PATRICK F. TIMMONS
P.O. Box 1521
Houston, Texas 77001
(713)751-4487

CERTIFICATE OF SERVICE

I, Jesse R. Pierce, a member of the Bar of this Court, and attorney for Appellant, The Superior Oil Company, do hereby certify that on this 2d day of July, 1982, in compliance with Rule 28 .3. & .5.(b) of the Rules of this Court, three copies of the foregoing Jurisdictional Statement were mailed to the following persons, who are or represent all parties required to be served:

Mr. Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
San Jacinto Building
Beaumont, Texas 77701

Mr. George Wikoff
City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77640

Jesse R. Pierce

APPENDIX

APPENDIX A

COURT OF APPEALS

NINTH SUPREME JUDICIAL DISTRICT
1001 PEARL ST. SUITE 330
BEAUMONT, TEXAS 77701

MARTIN DIES, JR., CHIEF JUSTICE — J. A. HULGAN
QUENTIN KEITH, ASSOCIATE JUSTICE — CLERK
HAROLD R. CLAYTON, ASSOCIATE JUSTICE — (713) 835-8402

Judgment entered December 22, 1981

Superior Oil Company

vs No. 8701

The City of Port Arthur, Texas et al

Appealed from the District Court of Jefferson County

Opinion by Associate Justice Harold R. Clayton

This cause came on to be heard on the transcript of the record, and, the same being inspected, because it is the opinion of the Court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed and that all costs of the appeal be assessed against the appellant, Superior Oil Company and the surety on the appeal bond, National Surety Company. A copy of this judgment, shall be certified below for observance.

A true copy of the judgment, to be entered, I hereby certify.

Joe A. Hulgan,
Clerk

APPENDIX B

SUPERIOR OIL COMPANY, Appellant,

v.

The CITY OF PORT ARTHUR, Texas et al., Appellee.

No. 8701.

Court of Appeals of Texas,
Beaumont.

Dec. 22, 1981.

Rehearing Denied Jan. 14, 1982.

CLAYTON, Justice.

Appellant, Superior Oil Company, filed this suit against the City of Port Arthur, attacking the validity of an annexation ordinance and to enjoin the City from attempting to collect any ad valorem taxes from appellant on its property in question, and in the alternative seeking a declaration that the "discriminatory failure of Defendants to include Plaintiff's property in an industrial district is an unconstitutional denial of the equal protection of the laws" and that "Plaintiff is entitled to have its property taxed on the same basis as property included in industrial districts by the City. . . ." The trial court granted the City's motion for summary judgment, upholding the validity of the questioned annexation ordinance.

The City of Port Arthur, a home rule city, by the process of several sequential annexation ordinances, annexed an area extending three marine leagues into the Gulf of Mexico, encompassing a drilling platform, five oil, gas, and mineral leases (leased from the State) and various other production facilities owned by appellant. The last of such ordinances, Ordinance No. 79-116, adopted December 10, 1979, annexed the territory in which appellant's property is situated. An area of a mile in width and 10½ miles in length, extending into the Gulf of Mexico, has been annexed by seven separate ordinances. The City began its

southward expansion and annexation in 1969. Originally, it did so to permit it to buttress levies in order to prevent property damage to city residents from rising water and storms.

In reaching its present boundary lines, the City annexed southward down the Sabine River until it reached the mouth thereof, then proceeded in a southwesterly direction along the Texas coastline, and then out into the Gulf of Mexico to the three marine league line. This was done by separate annexation ordinances, all of which complied with the provisions of the Municipal Annexation act, *Tex.Rev.Civ.Stat.Ann.art. 970a* (1963). Appellant attacks the validity of the last ordinance No. 79-116.

Appellant, by its fourth, fifth, and sixth points of error complain of the granting of the motion for summary judgment upon the grounds that the annexation ordinance, and the tax assessed against its property, was void "because it constituted a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States," and that the annexation ordinance is void "because it was done solely for purposes of taxation."

Appellant has grouped these three points under its argument, and we will consider them in the same manner. The sole argument made under the three points is that the Annexation Ordinance No. 79-116 is void because the annexed area, within which appellant's property is located, was annexed solely for taxation purposes, and the City cannot provide any municipal services to the annexed territory. We disagree and, accordingly, overrule these points of error.

The City of Port Arthur enacted the questioned annexation ordinance pursuant to and in full compliance with the provisions of *Article 970a*. Appellant's only complaint is that the annexation and taxation of its property violates the due process clause and the equal protection clause of the Fourteenth Amendment of the United States Constitution. These contentions do not present

a justiciable matter under such constitutional amendment, and cannot form a basis for rendering void the annexation of appellant's property.

The United States Supreme Court in *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907), held that annexation of territory by political subdivisions of the states does not present a justiciable matter under the Fourteenth Amendment. The Court states (at 178-9, 28 S.Ct. at 46):

> "Municipal corporations are political subdivisions of the state.... The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state.... Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it."

Although the *Hunter* decision has been limited in some voting right cases, the Supreme Court has made it clear that the case is still viable today. In *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978), the Supreme Court stated:

> "[W]e think that the [*Hunter*] case continues to have substantial constitutional significance in emphasizing the extraordinarily wide latitude that states have in creating various types of political subsidivions and conferring authority upon them."

On numerous occasions, the *Hunter* decision has been applied to municipal annexations. The courts have consistently held that annexations do not present a justiciable matter under the Fourteenth Amendment. In *Hammonds* v. *City of Corpus*

Christi, 226 F.Supp. 456, 458-9 (S.D.Tex. 1964), affirmed, 343 F.2d 162 (5th Cir.), cert. denied, 382 U.S. 837, 86 S.Ct. 85, 15 L.Ed.2d 80 (1965), the Court states: "The annexation of lands to a city or town has been held without exception to be purely a political matter, entirely within the power of the Legislature of the State to regulate.... Although we may disagree with the mode of annexation or annexations themselves, the remedy of those aggrieved is not in the courts, but in the State Legislature." See *Detroit Edison Company* v. *East China Township School Dist. #3*, 247 F.Supp. 296 (E.D.Mich.1965), affirmed 378 F.2d 225 (6th Cir.), cert. denied, 389 U.S. 932, 88 S.Ct. 296, 19 L.Ed.2d 284 (1967); *Deane Hill Country Club, Inc.* v. *Knoxville*, 379 F.2d 321 (6th Cir.), cert. denied, 389 U.S. 975, 88 S.Ct. 476, 19 L.Ed.2d 467 (1967); *Berry* v. *Bourne*, 588 F.2d 422 (4th Cir. 1978).

This has also been the holding of the courts of Texas. See *Winship* v. *City of Corpus Christi*, 373 S.W.2d 844 (Tex.Civ. App.—Corpus Christi 1963, writ ref'd n.r.e.), dism'd w.o.j. and cert. denied, 379 U.S. 646, 85 S.Ct. 612, 13 L.Ed.2d 551 (1965); *Carter* v. *Hamlin Hospital District*, 538 S.W.2d 671 (Tex.Civ. App.—Eastland 1976, writ ref'd n.r.e.), cert. denied, 430 U.S. 984, 97 S.Ct. 1680, 52 L.Ed.2d 378 (1977); *City of Pasadena* v. *Houston Endowment, Inc.*, 438 S.W.2d 152, 156 (Tex.Civ. App.—Houston [14th Dist.] 1969, writ ref'd n.r.e.); *City of Wichita Falls* v. *State ex rel. Vogtsberger*, 533 S.W.2d 927 (Tex.1976). In *State ex rel. Pan American Production Co.* v. *Texas City*, 157 Tex. 450, 303 S.W.2d 780, 782 (1957), appeal dism'd per curiam, 355 U.S. 603, 78 S.Ct. 533, 2 L.Ed.2d 523 (1958), our Supreme Court states:

> "[T]he conclusion of petitioners here that the annexation ordinance was unreasonable and arbitrary is only to say that it was unreasonable and arbitrary because the land was not suitable, and had no relation to the City's needs, and it was for the purpose only of acquiring additional revenue and could afford no benefit to the owners of the property

> annexed. The decisions of this State have repeatedly held that such facts do not warrant intervention or review by the courts."

Appellant's attack upon the validity of the annexation ordinance in the case at bar for the reason that the annexation was for the sole purpose of raising revenue and not offering municipal services has been rejected in numerous cases. Texas courts have consistently held that they will not look to the purposes of an annexation to determine its validity. Assuming appellant established that its property was within an area annexed by the City solely for purposes of raising additional revenue, we find such fact would not render the annexation ordinance void. In *City of Wichita Falls* v. *State ex rel. Vogtsberger*, supra at 929, our Supreme Court states: "Traditionally, the courts of this State have not scrutinized the purpose of annexation ordinances or the use or character of the occupation of the annexed territory." See also, *Carter* v. *Hamlin Hospital District*, supra; *State ex rel. Pan American Production Co.* v. *Texas City*, supra; *Norris* v. *City of Waco*, 57 Tex. 635 (1882).

Appellant relies on *Myles Salt Co.* v. *Board of Commissioners*, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 (1916). However, our Texas Supreme Court in *State ex rel. Pan American Production Co.* v. *Texas City*, supra at 783, distinguished the *Myles* case by stating:

> "A valid distinction is to be made, however, between a special tax or assessment to finance special improvements designed to benefit property or persons located within the particular taxing district, and on the other hand an ad valorem tax on all property within the taxing jurisdiction of the general welfare of the entire community. . . . [I]t is constitutionally sufficient if taxes are uniform and are for public purposes in which the City has an interest. [*Morton Salt Co.* v. *City of South Hutchinson*, 177 F.2d 889 (10th Cir. 1949)].

Based upon the foregoing authorities, we hold the City's Ordinance No. 79-116 is not void, and we follow the long established rule that the determination of the boundaries of a municipality, as to the grounds of attack made by appellant in the case at bar, is ordinarily a political function, entirely within the power of the legislature of this State to regulate, and the remedy of those aggrieved is not in seeking relief in the courts, but in the State Legislature. Furthermore, the mere fact that the annexation was for taxation and revenue raising purposes and that no municipal services were provided does not render the annexation ordinance void.

Our State Legislature has provided a remedy for those within annexed territory where municipal services have not been furnished. *Tex.Rev.Civ.Stat.Ann. art. 970a, §10* (1963), provides for the method of disannexation of such territory. See *Spencer* v. *City of Brownsville*, 458 S.W.2d 504 (Tex.Civ.App. — San Antonio 1970, no writ).

We note that the legislature has amended *Article 970a, §§6 and 10*, effective August 31, 1981, 1981 Tex.Sess.Law Serv., Ch. 842, at 3207 (Vernon), H.B. 1952. This amendment concerns municipal services and disannexation. The amendment became effective subsequent to the enactment of the ordinance involved herein, and we are not called upon to express an opinion thereon.

Appellant, by its seventh and eighth points of error, complains of the summary judgment for the reason that "[City's] system of granting industrial contracts denied Plaintiff equal protection of law in violation of the Fourteenth Amendment of the Constitution of the United States" and that it has "standing to challenge [City's] system of granting Industrial District Contracts."

Appellant in its brief states that prior to the annexation by Ordinance No. 79-116, its "property lay within the extraterritorial jurisdiction of the City; it was therefore subject to being included in an industrial district contract under Art. 970a [Sec. 5]. Plaintiff's constitutional right to equal treatment under law

was violated by Defendant's decision to annex the property rather than offer an industrial district contract to plaintiff." Appellant, in its brief, states that it is not attacking the constitutionality of *Article 970a, §5*, nor is it attacking the existing industrial contracts between the City and other companies. Appellant argues that its constitutional right to equal treatment under law was violated by the City's decision to annex its property rather than offer an industrial contract. Appellant further states in its brief that "Plaintiff does not allege that it was discriminated against by having its application [for industrial contract] refused when others were granted."

The City, pursuant to *Article 970a, §5* (1963), is granted:

> "[T]he permissive right and power to enter into contracts or agreements with the owner or owners of land in such industrial district to guarantee the continuation of the extraterritoral status of such district, and its immunity from annexation by the City for a period of time not to exceed seven (7) years, and upon such other terms and considerations as the parties might deem appropriate. . . ."

The summary judgment proof shows that there were in existence, at the time of trial, twelve industrial district contracts as authorized by *Article 970a, §5*. Only one industrial company has been rejected by the City for such a contract and that was for the reason that the company was in a conjested area. Such proof does not show any efforts on the part of the City to discriminate against any particular industry for an industrial district contract. Appellant admits it was never refused any such contract by the City.

Appellant's complaint and argument that the City acted arbitrarily and unreasonably and discriminated against it by annexing its property rather than attempting to enter an industrial district contract covering its property is rejected. The City had the authority and power to annex the area in which appellant's property was located, as well as having the power to create such

an industrial district. Appellant has offered no reason for prohibiting the City from exercising either powers, or both, or neither. We have held that the annexation power was legally exercised, and appellant admits the City has the right to create the industrial districts and enter into contracts with industry located within such districts. We find no merit to any complaint or argument made by appellant under these points. Moreover, appellant has never, at any time, been refused any industrial contract by the City. By reason thereof, it is not now in a position to complain, and has no standing to now challenge the failure of the City to enter into an industrial district contract with it. See *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972); *Jackson* v. *Dukakis*, 526 F.2d 64 (1st Cir. 1975).

Finding no error, we affirm the judgment of the trial court.

AFFIRMED.

KEITH, Justice, concurring.

I join, without reservation, in the scholarly and well-reasoned opinion affirming the judgment of the trial court. I file this concurring opinion to assert the existence of another ground of affirmance.

The summary judgment record in this case shows without contradiction that Port Arthur Ordinance No. 79-116 was involved in a quo warranto proceeding in Cause No. A-110319 upon the docket of the District Court of Jefferson County, Texas, entitled "The State of Texas, ex rel. The Superior Oil Company vs. City of Port Arthur, Texas."[1]

On February 26, 1980, a judgment was entered in the consolidated cause upholding the validity of Port Arthur Ordinance

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[1] This cause was consolidated for trial with another cause pending in said court bearing No. A-110231, styled "The State of Texas, ex rel., Bob Armstrong, Commissioner of The General Land Office vs. City of Port Arthur, Texas."

No. 79-116 challenged by Superior Oil in this proceeding. The judgment in the original quo warranto suit was final before the instant proceeding was filed.[2] Superior Oil Company, having participated in the prior quo warranto proceedings, is bound by the judgment entered therein. *Williams* v. *White*, 223 S.W.2d 278, 283 (Tex.Civ.App.—San Antonio 1949, writ ref'd). See also, *Cochran County* v. *Boyd*, 26 S.W.2d 364, 365 (Tex.Civ.App.—Amarillo 1930, writ ref'd); *Allied Van Lines* v. *Central Forwarding, Inc.*, 535 S.W.2d 412, 415-416 (Tex.Civ.App.—Waco 1976, writ ref'd n. r. e.).

I join in the affirmation of the trial court's judgment denying any relief to the appellant.

---

[2] The State of Texas and Superior Oil Company attempted to appeal from the judgment entered in the District Court in the quo warranto proceedings but failed to file the transcript within the prescribed time. Our Clerk refused to file the record and, upon motion by the appelants in that cause, we refused to order the Clerk to file the record and the trial court's judgment became final. These proceedings are in our record under No. 8566, "The State of Texas, ex rel. Bob Armstrong, Commissioner of The General Land Office, et al. v. City of Port Arthur, Texas."

The summary judgment record establishes the finality of the quo warranto judgment. Moreover, we are authorized and do take notice of our own records in a case involving the same subject matter between the same parties. *Cochran County* v. *Boyd*, 26 S.W.2d 364, 365 (Tex.Civ.App. — Amarillo 1930, writ ref'd.).

APPENDIX C

C-1

No. D-111, 325

IN THE

DISTRICT COURT OF JEFFERSON COUNTY, TEXAS

136th JUDICIAL DISTRICT

THE SUPERIOR OIL COMPANY

VS.

THE CITY OF PORT ARTHUR, TEXAS, ET AL

FINAL JUDGMENT

Upon April 28, 1981, the Court heard and considered the defendant City of Port Arthur, Texas' Motion for Summary Judgment, together with the arguments and brief of the parties thereon. Jesse Pierce and Nancy Polis appeared for plaintiff Superior Oil Company. George Wikoff, Thomas H. Walston, and Robert Q. Keith appeared for defendant, City of Port Arthur, Texas. Having considered the pleadings, depositions, admissions, affidavits, and responses to said motion on file and the argument of counsel thereon, the Court is of the opinion there is no genuine issue of material fact in this cause and the City of Port Arthur, Texas, is entitled to judgment as a matter of law. It is accordingly, ORDERED, ADJUDGED, and DECREED:

I.

Annexation Ordinance 79-116 adopted by the City of Port Arthur, Texas, on December 10, 1979, is valid.

II.

The property of plaintiff which is the subject matter of this lawsuit [to-wit: five (5) oil, gas, and mineral leases on approximately 1199 Acres in Tracts 13L, 14L, and 17L, Gulf of Mexico, Jefferson County, Texas, the oil, gas, and minerals located

under the surface of the property and related production facilities and equipment] has been lawfully annexed to the City of Port Arthur, Texas, pursuant to Ordinance 79-116 of said City.

III.

The ad valorem taxes assessed by the City upon the property of plaintiff for the year 1980 are in all respects valid and lawful.

IV.

All costs are taxed to plaintiff, Superior Oil Company.

V.

Plaintiff, Superior Oil Company, shall have and recover nothing by reason of this suit.

SIGNED this 1st day of May, 1981.

/s/ JACK R. KING
JACK R. KING
Judge Presiding

APPENDIX D

COURT OF APPEALS
NINTH SUPREME JUDICIAL DISTRICT
1001 PEARL ST. SUITE 330
BEAUMONT, TEXAS 77701

MARTIN DIES, JR., CHIEF JUSTICE
QUENTIN KEITH, ASSOCIATE JUSTICE
HAROLD R. CLAYTON, ASSOCIATE JUSTICE

J. A. HULGAN
CLERK
(713) 835-8402

January 14, 1982

Mr. Jesse R. Pierce, Attorney
Suite 1200
711 Polk
Houston, Texas 77002

Thomas Walston, Attorney
Robert Keith, Attorney
San Jacinto Building
Beaumont, Texas 77701

George Wikoff
City Attorney
Port Arthur City Hall
Port Arthur, Texas 77640

In Re: No. 8701, Superior Oil Co. vs City of Port Arthur, Tx.

Gentlemen:

The Appellant's Motion for Rehearing in the above styled and numbered cause was overruled January 14, 1982.

Very truly yours,

By:

Joe A. Hulgan,
Clerk

APPENDIX E

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

Dear Sir: April 7, 1982

You are hereby notified that the Application for Writ of Error as supplemented in the case of SUPERIOR OIL CO. v. CITY OF PORT ARTHUR No. C-1059 was this day refused. No reversible error.

Very truly yours,
GARSON R. JACKSON, Clerk

APPENDIX F

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

May 12, 1982

Dear Sir:

You are hereby notified that the Motion for Rehearing in the case of SUPERIOR OIL CO. v. CITY OF PORT ARTHUR No. C-1059 was this day overruled.

Very truly yours,
GARSON R. JACKSON, Clerk

APPENDIX G

G-1

No. 8701

IN THE

COURT OF CIVIL APPEALS

FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS

THE SUPERIOR OIL COMPANY,

Appellant,

VS.

THE CITY OF PORT ARTHUR, ET AL.,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that The Superior Oil Company, Appellant, hereby appeals to the Supreme Court of the United States from the judgment of the Court of Appeals for the Ninth Supreme Judicial District of Texas affirming the summary judgment in favor of Appellees, entered by this Court on December 22, 1981.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

PORTER & CLEMENTS

By /s/ JESSE R. PIERCE
Jesse R. Pierce
711 Polk, Suite 1200
Houston, Texas 77002
(713) 757-7040

Attorneys for Appellant

AFFIDAVIT OF SERVICE

THE STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared JESSE R. PIERCE, who being by me first duly sworn, stated on his oath the following:

"My name is Jesse R. Pierce, I am counsel for Appellant The Superior Oil Company in the above-entitled and numbered cause. True and correct copies of the foregoing Notice of Appeal were served by depositing same in a United States mailbox, with first-class postage prepaid, addressed to counsel of record for Appellees at their post office addresses, as follows:

Mr. George Wikoff
P. O. Box 1089
Port Arthur, Texas 77640

Mr. Robert Q. Keith
Mr. Thomas H. Walston
Mehaffy, Weber, Keith & Gonsoulin
1400 San Jacinto Building
Beaumont, Texas 77701

All parties required to be served have been served."

JESSE R. PIERCE
Jesse R. Pierce

SWORN TO AND SUBSCRIBED before me on this 21st day of May, 1982, to certify which written my hand and seal of office.

ESMERALDA CADENA
Notary Public for the State of Texas

ESMERALDA CADENA
Printed Name of Notary Public

My Commission Expires 2-13-85

Received by the Court of Appeals for the Ninth Supreme Judicial District of Texas, on the 24th day of May, 1982.

APPENDIX H

P.O. No. 2726
12-10-79

ORDINANCE NO. 79-116

AN ORDINANCE ANNEXING TERRITORY ADJACENT AND CONTIGUOUS TO THE CITY OF PORT ARTHUR PURSUANT TO SECTION 6 OF ARTICLE 970a, V.A.C.S., AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

WHEREAS, pursuant to Vernon's Annotated Civil Statutes, Article 970a, a public hearing was held November 5, 1979, after duly published notice thereof, to provide an opportunity for all interested persons to be heard concerning the annexation of the following described property; and,

WHEREAS, the City Council has deemed that it would be in the public interest to annex the following described property; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. After the passage of this Ordinance, the following described territory shall be a part of the City of Port Arthur for all purposes and shall be subject to all the laws, rules, regulations, and Ordinances of the City of Port Arthur, to-wit:

GULF OF MEXICO TRACT NO. 3

COMMENCING at a point on the southeasterly corner of the Nature Conservency 9,000.0012-acre tract of land, said point being marked with a U.S. Department of Interiors Monument stamped No. 44 and set by C.H. Porter, Registered Public Surveyor No. 1649, in July, 1977, said point being further located at Lambert Grid Coordinates X = 3,637,638.511 and Y = 707,443.33;

THENCE, N. 23°24'08" E., 3,195.7413 feet to a point on the common boundary line between the States of Texas and Louisiana in the Sabine Pass Channel as established by the

Supreme Court of the United States of America in an opinion announced on June 14, 1976, 426 U.S. 465; said point being located at Latitude North 29°41'15.323" and Longitude West 93°50'11.722", said point being further located at Lambert Grid Coordinates X = 3,638,907.80 and Y = 710,376.19, said point being referred to as "Federal Point";

THENCE, following said boundary line between the States of Texas and Louisiana S. 15°14'13" E., 16,358.4864 feet to a point at Lambert Grid Coordinates X = 3,643,207.023 and Y = 694,592.760;

THENCE, continuing along said boundary line between the States of Texas and Louisiana S. 16°16'52" E., 24,351.2544 feet to the Point of Beginning of the tract herein described, said point being located at Lambert Grid Coordinates X = 3,650,033.962 and Y = 671,218.0618, point also being the most southeasterly corner of the City of Port Arthur City Limits as established by City Ordinance No. 79-103;

THENCE, continuing along said boundary line between the States of Texas and Louisiana S. 16°16'52" E. for a distance of 16,255.712 feet to its intersection with the Three Marine League Line established by the Texas Submerged Land Act of 1953, said Act being upheld by the United States Supreme Court in ruling of 1960. Said Point of intersection being a point for corner at Lambert Grid Coordinates X = 3,654,591.296 and Y = 655,614.252;

THENCE, S. 73°43'08" W., 5,500.00 feet to a point for corner at Lambert Grid Coordinates X = 3,649,311.861 and Y = 654,072.3153;

THENCE, N. 16°16'52" W., 16,255.712 feet to a point for corner at Lambert Grid Coordinates X = 3,644,754.527 and Y = 669,676.1251, said point being the most southwesterly corner of the City of Port Arthur City Limits as established by City Ordinance No. 79-103;

THENCE, N. 73°43'08" E., along a line contiguous with the said City of Port Arthur City Limits for a distance of 5,500 feet to the Point of Beginning.

See Map attached and made a part hereof.

NOTE: Texas (Lambert) Coordinates System, South Central Zone, Coordinates as used herein are expressed in feet.

Section 2. Should any part of this Ordinance be declared invalid by a court of competent jurisdiction it shall not effect or vary the remaining parts of this Ordinance.

Section 3. Any land or area within the Annexed Territory which is already a part of and is incorporated within the Corporate Limits of the City of Port Arthur is hereby excluded, and any land or area within the Annexed territory which is not within the jurisdiction of the City of Port Arthur to annex is hereby excluded and excepted.

Section 4. All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed but only to the extent of the conflict.

Section 5. This being an Ordinance not requiring publication it shall take effect upon the second and final reading hereof.

INTRODUCED, READ, AND PASSED to second reading the 19th day of November, A.D., 1979, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Huber, Clark, James & Bernard; NOES: None.

READ, ADOPTED AND APPROVED on second and final reading on this 10th day of December, A.D., 1979, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Huber, Clark, James & Bernard; NOES: None.

BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

GEORGE WIKOFF
George Wikoff, City Attorney

APPROVED FOR ADMINISTRATION:

ROBERT A. BOWERS,
Robert A. Bowers, P.E.
Director of Public Services

Office - Supreme Court, U.S.
FILED
AUG 7
ALEXANDER L. STEVAS,
CLERK

NO. 82-5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,
Appellant

v.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,
Appellees

On Appeal From The Court Of Appeals For The Ninth Supreme Judicial District Of Texas

MOTION TO DISMISS OR AFFIRM

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011
Counsel of Record for Appellees

GEORGE WIKOFF
City Attorney of Port Arthur
P. O. Box 1089
Port Arthur, Texas 77640
(713) 983-3321
Attorney for Appellees

Alpha Law Brief Co., Inc. - 5606 Parkersburg—Houston, Texas 77036—223-3003

QUESTIONS PRESENTED

1. Whether a justiciable issue arises under the due process clause of the Fourteenth Amendment based solely on a party's allegations that its property was annexed by a municipality for purposes of taxation, and that its property will not receive a direct benefit from city services.

2. Whether the due process clause of the Fourteenth Amendment requires a direct benefit to be provided to property which is subjected to ad valorem taxation by a municipality for general support of the municipal government.

LIST OF ALL PARTIES

APPELLANT:

The Superior Oil Company

APPELLEES:

The City of Port Arthur, Texas

Bernis W. Sadler, Mayor and member of the City Council of the City of Port Arthur, Texas.

George W. Dibrell, City Manager of the City of Port Arthur, Texas.

Maurice Conerly, Arthur J. Guidry, Joe James, Malcolm L. Clark, C. Fred Huber, and Ray Bernard, members of the City Council of Port Arthur, Texas.

The Board of Equalization of the City of Port Arthur, Texas for the year 1980.

Sam Aquilina, George W. Lacey, Leroy Arceneaux, E. W. Meyer, and Alfred Valdez, members of the Board of Equalization of the City of Port Arthur, Texas for the year 1980.

Roland Bieber, Tax Assessor and Collector of the City of Port Arthur, Texas.

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NO. 82-5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,
Appellant

v.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,
Appellees

On Appeal From The Court Of Appeals For The Ninth Supreme Judicial District Of Texas

MOTION TO DISMISS OR AFFIRM

The City of Port Arthur, Texas, et al, move the Court pursuant to Sup. Ct. R. 16.1, to dismiss the appeal herein, or, in the alternative, to affirm the judgment rendered in this case by the Texas Court of Appeals for the Ninth Supreme Judicial District.

The principles of law controlling the questions presented are so well established, and appellant's contentions are so lacking in substance, that plenary review of the case by this Court is not warranted.

OPINIONS BELOW

The opinion of the Texas Court of Appeals for the Ninth Supreme Judicial District is reported at 628 S.W. 2d 94. Neither the State District Court nor the Supreme Court of Texas issued an opinion in this case.

STATEMENT OF THE CASE

This is a municipal annexation and ad valorem tax case. In November, 1979, the City of Port Arthur, Texas, enacted Ordinance 79-116. By this ordinance, the city annexed certain submerged lands owned by the State of Texas, upon which appellant has five oil, gas and mineral leases, and various production facilities.

The City of Port Arthur enacted the annexation ordinance in full compliance with the Texas Municipal Annexation Act, Tex. Rev. Civ. Stat. art. 970a (Vernon's 1963, Supp. 1981) as it then existed,[1] and appellant has never contested the procedure under state law.[2]

---

1. The Texas Municipal Annexation Act was substantially modified by amendment in 1981. However, these amendments do not affect the annexation in question.

2. In late 1979, the State of Texas brought a quo warranto proceeding on the relation of the Commissioner of the General Land Office, challenging the annexation of the submerged lands owned by the State of Texas. *State of Texas, ex rel, Bob Armstrong, Commissioner of the General Land Office of the State of Texas v. City of Port Arthur, Texas*, cause no. A-110,231, in the 58th Judicial Court of Jefferson County, Texas. A second quo warranto proceeding was brought by the State of Texas on the relation of the Superior Oil Company. *The State of Texas, ex rel, The Superior Oil Company v. The City of Port Arthur, Texas*, cause no. A-110,319, in the 58th Judicial Court of Jefferson County, Texas. These two suits were consolidated on January 23, 1980. On February 26, 1980, a judgment was entered in the consolidated case upholding the validity of Ordinance No. 79-116. The State of Texas failed to perfect an appeal, and the judgment is final.

After annexation, appellant's property became subject to ad valorem taxation by the City of Port Arthur. The property was assessed for taxation by the city in 1980 and appellant subsequently brought this suit in State District Court challenging the annexation and taxation of its property.

Initially, appellant challenged the taxation of its property by alleging that other taxable property was deliberately excluded from the city's tax rolls. However, that claim was dropped in an amended petition. Further, appellant has never contended that the city's ad valorem taxes are used for anything other than public purposes, and, in the proceedings below, appellant judicially admitted that it was not challenging the City's assessed valuation of its property. Thus, at trial, appellant's sole contention was that the annexation and taxation of its property violated the due process and equal protection[3] clauses of the Fourteenth Amendment to the United States Constitution.

The trial court granted summary judgment for the City of Port Arthur, which was affirmed by the Texas Court of Appeals for Ninth Supreme Judicial District. The Texas Supreme Court refused appellant's application for writ of error with the notation of "no reversible error".

Appellant now seeks review from this Court based solely on the allegations that appellant's property was annexed by Port Arthur for the purpose of taxation, and that appellant's property will not receive any direct benefit from municipal services.

---

3. Appellant has not appealed to this Court the rejection by the lower courts of its equal protection claim.

ARGUMENT

The questions presented by this appeal are so unsubstantial and lacking in merit that they do not warrant plenary review by the Court. In an unbroken line of cases, this Court has consistently held (1) that municipal annexations do not present a justiciable matter under the due process clause of the Fourteenth Amendment; and (2) that nothing in the due process clause of the Fourteenth Amendment requires a taxpayer to derive any direct benefit from taxes levied for public purposes.

A.

No Justiciable Issue

The Court should dismiss this appeal because there is no substantial federal question presented by appellant's claim. In *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907) this Court held that the territory to be included within municipalities and other political subdivisions is a matter of "absolute discretion" by the states,[4] which does not present a justiciable matter under the due process clause of the Fourteenth Amendment. 28 Sup. Ct. at 46-47.

Numerous courts have applied *Hunter* to municipal annexations, and this Court has consistently declined to

---

4. Significantly, the Texas legislature has exercised its discretion in the area of municipal annexations of state owned submerged lands. In 1981, subsequent to Port Arthur's annexation in this case, the Texas legislature enacted § 11.0131 of the Texas Natural Resource Code. This statute prohibits home-rule cities from annexing state owned submerged lands located gulfward from the coastline. However, the act specifically provided that it did not apply to annexations completed before the effective date of the act. Thus, the statute did not affect Port Arthur's annexation in this case. The statute is reproduced at Appendix A.

disturb or review these cases. *See Jimenez v. Hidalgo County Water Improvement District No. 2*, 68 F.R.D. 668, 671-72 (S.D. Tex. 1975), *aff'd*, 424 U.S. 950 (1976); *Hammonds v. City of Corpus Christi*, 226 F. Supp. 456, 458 (S.D. Tex. 1964), *aff'd*, 343 F.2d 162 (5th Cir.), *cert. denied*, 382 U.S. 837 (1965); *Deane Hill Country Club, Inc. v. City of Knoxville*, 379 F.2d 321, 324-25 (6th Cir. 1967), *cert. denied*, 389 U.S. 975 (1967); *Detroit Edison Co. v. East China Township School District No. 3*, 378 F.2d 225, 228-29 (6th Cir.), *cert. denied*, 389 U.S. 932 (1967); *Carter v. Hamlin Hospital District*, 538 S.W.2d 671, 673-74 (Tex. Civ. App.—Eastland 1976, writ ref'd n.r.e.), *cert. denied*, 430 U.S. 984 (1977). Thus, no substantial federal question is presented by this appeal because Port Arthur's annexation does not present a justiciable issue under the Fourteenth Amendment.

Appellant has erroneously argued that *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) limits the *Hunter* decision under the facts of the present case. *Gomillion* involved racial discrimination in the area of voting rights, which is not at issue here; and *Gomillion* was decided under the *Fifteenth* Amendment, not the Fourteenth Amendment. 364 U.S. at 342-43.

Rather than limiting *Hunter v. Pittsburgh*, this Court has made it clear that, in areas other than voting rights, "the case continues to have substantial constitutional significance in emphasizing the extraordinarily wide latitude that States have in creating various type of political subdivisions and conferring authority upon them". *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978). This is particularly true in the present case,

inasmuch as the territory annexed is state owned land. It is plain that Port Arthur's annexation in this case does not present a justiciable matter under the due process clause of the Fourteenth Amendment, and the Court should dismiss this appeal, or, alternatively, affirm the judgments of the Courts below.

B.

Benefit From Taxes

Appellant's contention that the ad valorem tax imposed by Port Arthur on appellant's property violates the due process clause of the Fourteenth Amendment, is patently without merit and borders on being frivolous. Appellant relies on *Myles Salt Co. v. Board of Commissioners*, 239 U.S. 478 (1916), alleging that its property will receive no direct benefit from city services. However, *Myles Salt Co.* involved a limited purpose drainage district established solely for the benefit of specific tracts of land. In contrast, the present case involves a municipality with general police jurisdiction, and ad valorem taxes levied for public purposes, and for the general welfare of the entire community.[5]

---

5. At various points in its Jurisdictional Statement, appellant incorrectly states that its property was annexed and taxed "solely for the benefit of other property". (Jurisdictional statement at 5 and 8).

Further, there was summary judgment evidence that the Superior Oil Company is benefited by municipal services, including liquid waste disposal, access to shoreside shipping points by public streets, city water sold and delivered by offshore service industries for exploration and drilling, and police services. Further, the city had concerns about the environmental impact of offshore drilling operations, and regulation of pipelines that cross the annexed territory. (Deposition of Mayor Bernis Sadler).

Although appellant claims the facts of this case are unique, the law is clear and long established. Very recently, in *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981), this Court reaffirmed the "consistent rule" that:

> " 'Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.
>
> A tax is not an assessment of benefits. It is, as we have said, a means of distributing the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . .' "

453 U.S. at ____, 69 L.Ed.2d at 897, *quoting, Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-22 (1937).

Further, this "consistent rule" has been adhered to by this Court for more than 100 years. *See, Kelly v. City of Pittsburgh*, 104 U.S. (14 Otto) 78, 79-83 (1881); *Thomas v. Gay*, 169 U.S. 264, 18 Sup. Ct. 340, 344-46 (1898); *St. Louis & S.W. Ry. v. Nattin*, 277 U.S. 157, 159 (1928); *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-23 (1937).

In short, appellant's contention that the ad valorem taxes in this case violate the due process clause, based solely on appellant's allegation that its property will receive no direct benefit from city services, is wholly without merit and does not present a substantial question warranting plenary review by this Court.

CONCLUSION

For the reasons stated above, appellees move the Court to dismiss this appeal for lack of a substantial federal question, or, in the alternative, to affirm the judgment entered in this cause by the Texas Court of Appeals for the Ninth Supreme Judicial District.

Respectfully submitted,

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011

Counsel of Record for Appellees

GEORGE WIKOFF
City Attorney of Port Arthur
P. O. Box 1089
Port Arthur, Texas 77640
(713) 983-3321

Attorney for Appellees

July 30, 1982

APPENDIX

APPENDIX A

H. B. No. 411

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 11, Natural Resources Code, as amended, is amended by adding Section 11.0131 to read as follows:

Sec. 11.0131. Jurisdiction of Home-Rule Cities Over Submerged Lands

(a) In this section:

(1) "Coastline" has the meaning assigned by Section 11.013(c) of this code.

(2) "State-owned submerged lands" means the state-owned submerged lands described by Section 11.012 of this code.

(b) A home-rule city may not annex state-owned submerged lands located:

(1) gulfward from the coastline; or

(2) more than 5,280 feet from the corporate city boundaries in bays or estuaries.

(c) A contract or agreement by which a home-rule city purports to pledge, directly or indirectly, taxes or other revenue from or attributable to state-owned submerged lands located more than one marine league gulfward from the coastline does not create an enforceable right to prevent the removal, by disannexation or other means, of all or part of the submerged lands from the city's jurisdiction.

(d) This section expires October 1, 1983.

Appellant's Reply Brief

Office - Supreme Court, U.S.
FILED
AUG 11 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-5

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,

Appellant,

VS.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

JESSE R. PIERCE
PORTER & CLEMENTS
711 Polk, Suite 1200
Houston, Texas 77002
(713) 757-7040

Counsel for Appellant

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Wilcox v. *St. Mary's University*, 531 S.W.2d 589 (Tex. 1975). 3

IN THE

Supreme Court of The United States

OCTOBER TERM, 1981

THE SUPERIOR OIL COMPANY,

Appellant,

VS.

THE CITY OF PORT ARTHUR, TEXAS, ET AL,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR THE NINTH SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

ARGUMENT

I.

The Issue is Justiciable

This appeal squarely raises the issue of whether *Hunter* v. *Pittsburgh*, 207 U.S. 161 (1907), stands as an absolute bar to constitutional challenges to municipal annexations under the Fourteenth Amendment. *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), teaches that the ruling in *Hunter* v. *City of Pittsburgh* is not absolute. This Court recognized as much recently in *Holt Civic Club* v. *City of Tuscaloosa*, 439 U.S. 60 (1978). While *Hunter* v. *City of Pittsburgh* unquestionably has continuing constitutional significance, this Court also expressly noted that it did

"not mean to imply that every [state provision respecting extraterritorial powers of cities] would pass constitutional muster." *Holt Civic Club* v. *City of Tuscaloosa, supra,* n. 8, at 72. Presumably this Court also did not intend to imply that every conceivable municipal annexation would also pass constitution muster.

Appellants erroneously seek to breath new life into *Hunter* v. *City of Pittsburgh* by noting the denial of certiorari by this Court in several cases which applied *Hunter* v. *City of Pittsburgh* to municipal annexations. Of course, "the denial of certiorari imports no expression of opinion on the merits of the case, as the bar has been told many times." *United States* v. *Carver,* 260 U.S. 482, 490 (1923).

Appellees' Motion to Dismiss or Affirm should not be permitted to cloud the issues presented by the mention of several tangential and irrelevant matters. For example, the quo warranto proceeding mentioned in footnote 2 (Motion to Dismiss or Affirm at 2) is in no way involved in the instant appeal. Appellees cannot rely on the quo warranto action to support the judgment under attack here because the judgment in the quo warranto action was not made a basis of the majority opinion of the court of appeals in deciding this case below. Also, contrary to appellees' assertion (Motion to Dismiss or Affirm at 3), appellant did not challenge the annexation and taxation of this property under the equal protection clause of the Fourteenth Amendment. In an alternative claim in the state courts, appellant contended that appellees' system of granting industrial district contracts violated the equal protection clause. However, the annexation ordinance and the resulting taxation were challenged only on due process grounds, as set out in the Jurisdictional Statement at 2-5. No equal protection argument is presented here because the annexation ordinance and the taxation of the property were not challenged on that basis in the state courts.

II.

The Federal Questions are Substantial

The ultimate issue involved in this appeal is whether a city is permitted under the Due Process Clause of the Fourteenth Amendment to annex and tax property to which it can provide *no* benefit. Throughout their Motion to Dismiss or Affirm, appellees state that the issue is whether the property must receive *direct* benefit. Appellant realizes that there is no constitutional requirement of direct benefit, and it has not and does not contend otherwise. Appellant has alleged throughout this case that no benefit of any type, direct or indirect, tangible or intangible, can be extended to a submerged gas field and production equipment located nine miles out in the Gulf of Mexico. This allegation was made in the court of appeals and the court of appeals obviously understood it, for that court wrote that "the mere fact . . . that no municipal services were provided does not render the annexation ordinance void." 628 S.W.2d at 97.[1] Appellees should not be permitted to distract this Court's attention from the issue raised and decided below by their mischaracterization of the grounds of appellant's constitutional challenge.

Appellees' sole ground for challenging the substantiality of the questions presented is *Hunter* v. *City of Pittsburgh*. The federal questions presented involve issues that are of grave importance to the oil industry, municipal governments, and states that grant offshore mineral leases. The justiciability question also raises an

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[1] Appellees' statements at n. 5, p. 6 of the Motion to Dismiss or Affirm regarding the summary judgment proof are merely quibbling and are of no legal significance. Under Texas law, a court reviewing a summary judgment is required to construe evidence favorable to the non-movant as true, to indulge any reasonable inference in favor of the non-movant, and to resolve all doubt in favor of the non-movant. *Wilcox* v. *St. Mary's University*, 531 S.W.2d 589 (Tex. 1975). Thus, the court of appeals was required to assume, as it apparently did, that *no* benefit could be extended to appellant's property. This being so, the tax dollars in question *ipso facto* were solely for the benefit of other property.

important issue as to the scope of the due process clause and the power of courts to redress violations of the rights guaranteed by the clause.

Appellees' contention that appellant's due process argument is without merit and "borders on being frivolous" (Motion to Dismiss or Affirm at 6) flies in the face of a holding by a United States District Court, after a trial, that this very annexation "was merely a land grab" and was violative of the due process clause. *Superior Oil Co.* v. *City of Port Arthur*, 535 F.Supp. 916, 918, (1982).[2]

Substantial and important questions are presented here and Appellant respectfully submits that this Court should decide them.

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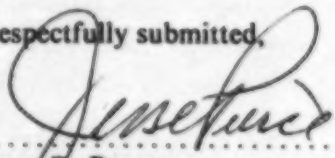
[2] This case has been stayed pending the outcome of the instant appeal. 535 F.Supp. 916, 921 (1982).

CONCLUSION

For the reasons stated, appellant requests that appellees' Motion to Dismiss or Affirm be denied and that this Court note probable jurisdiction and either summarily reverse the judgment below or set the case for oral argument.

Respectfully submitted,



JESSE R. PIERCE
PORTER & CLEMENTS
711 Polk, Suite 1200
Houston, Texas 77002
(713) 757-7040
Counsel for Appellant

Of Counsel:

THOMAS H. LEE
FOREMAN & DYESS
4200 InterFirst Plaza
Houston, Texas 77002
(713) 658-8500

PATRICK F. TIMMONS
P. O. Box 1521
Houston, Texas 77001
(713) 751-4487

CERTIFICATE OF SERVICE

I, Jesse R. Pierce, a member of the Bar of this Court, and attorney for Appellant, The Superior Oil Company, do hereby certify that on this 10th day of August, 1982, in compliance with Rule 28 .3. & .5.(b) of the Rules of this Court, three copies of the foregoing Brief Opposing Motion to Dismiss or Affirm were mailed to the following persons, who are or represent all parties required to be served:

Mr. Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
San Jacinto Building
Beaumont, Texas 77701

Mr. George Wikoff
City Attorney
City of Port Arthur
P. O. Box 1089
Port Arthur, Texas 77640

Jesse R. Pierce